



UNITED STATES GOVERNMENT  
**NATIONAL LABOR RELATIONS BOARD**  
FREEDOM OF INFORMATION ACT BRANCH  
Washington, D.C. 20570

Via email

March 3, 2023

Re: FOIA Case No. NLRB-2023-000087

Dear Alyson Dieckman (Littler Mendelson, P.C.):

This is in response to your request, under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, received on October 11, 2022, in which you seek copies of any and all call logs or similar documents, any and all visitor logs or similar documents and copies of any and all correspondence (hard copy or electronic, including without limitation text messages, emails, voicemails, instant messages) including but not limited to, internal correspondence, correspondence with Workers United, correspondence with Service Employees International Union (SEIU), correspondence with counsel for Workers United, and correspondence with members of the proposed bargaining unit in *Starbuck Corporation*, Case Nos. 19-RC-295129, 19-RC-295494 and 19-RC-295849. You assumed financial responsibility for the processing of your request in the amount of \$1000.00.

We acknowledged your request on October 11, 2022. In your December 1, 2022 reply email to a member of my staff, you clarified the last portion of your request as seeking any correspondence in Case Nos. 19-RC-295129, 19-RC-295494, and 19-RC-295849 among the Agency, the specified unions, including their counsel, and/or members of the proposed bargaining unit. We regret the delay in our final response.

Your request is denied in part and granted in part, as explained below.

After conducting searches of the Agency's electronic casehandling system, NxGen, I have determined that certain records responsive to the portion of your request seeking records from Case No. 19-RC-295849 are part of an investigative file in an open case before the Agency and, therefore, are exempt from disclosure pursuant to Exemption 7(A) of the FOIA. 5 U.S.C. § 552 (b)(7)(A). Exemption 7(A) allows an agency to withhold records included in an open investigatory file where disclosure could reasonably be expected to interfere with enforcement proceedings. *See NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 236 (1978). Therefore, given the open status of the requested case, the investigatory records, including correspondence among the Region, the

specified unions, and proposed bargaining unit members as well as logs, in that case file are being withheld in full at this time pursuant to Exemption 7(A).

Your request is granted to the extent that I have attached 86 pages of responsive, releasable formal records in Case No. 19-RC-295849, which are available to the public pursuant to NLRB FOIA regulations, and their transmittal email communications between the Regional office and the Petitioner. I have included those emails as there is no foreseeable harm to their release. No information has been withheld from these records.

Please note that Exemption 7(A) protection is “temporal in nature.” *Citizens for Responsibility & Ethics in Wash. v. Dep’t of Justice*, 746 F.3d 1082, 1097 (D.C. Cir 2014) (citing *NLRB v. Robbins Tire*, 437 U.S. 214, 223-24 230-32 (1978)). As such, case file records may become disclosable, subject to applicable exemptions, after the case closes, that is, once a Board decision and/or court order issues, there has been full compliance with a settlement, or the case has otherwise been closed under Agency procedures. Accordingly, you may wish to file a new request at that time.

The status of this case can be tracked on the Agency website at [www.nlr.gov](http://www.nlr.gov) by going to the Cases & Decisions tab, clicking case search, entering the case number in the search box and viewing the case page or by clicking the link here: <https://www.nlr.gov/case/19-RC-295849>.

Regarding the two closed cases, 19-RC-295129 and 19-RC-295494, the NxGen searches located 62 pages of responsive, releasable correspondence and their attachments between the Regional staff and the Petitioner, Workers United, including their counsel. No information has been withheld from these records. These searches further yielded no responsive communications with SEIU, their counsel, and/or any proposed bargaining unit members. Included in this release are two blank, auto-generated casehandling log forms. While these forms have no informational value, I am including them in the interests of completeness and clarity, as its release poses no foreseeable harm to the Agency’s internal processes.

Regarding the portion of your request that seeks copies of any and all visitor logs or similar documents in the two closed cases, a search inquiry was made to the Region 19 office. Staff in that office confirmed that no visitor logs are maintained by that office. Thus, there are no records responsive to this portion of your request for all three cases.

For the purpose of assessing fees, we have placed you in Category A, commercial use requester. This category refers to requests “from or on behalf of a person who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose

behalf the request is made, which can include furthering those interests through litigation.” NLRB Rules and Regulations, 29 C.F.R. § 102.117(d)(1)(v). Consistent with this fee category, you “will be assessed charges to recover the full direct costs of searching for, reviewing for release, and duplicating the records sought.” 29 C.F.R. § 102.117(d)(2)(ii)(A). Charges are \$9.25 per quarter-hour of professional time. 29 C.F.R. § 102.117(d)(2)(i).

Four hours of professional time was expended reviewing the requested material for release. Accordingly, please remit \$148.00.

Payment Instructions: We are no longer accepting checks or money orders as payment. To submit payment for your FOIA request, please use [www.pay.gov](http://www.pay.gov). From the [www.pay.gov](http://www.pay.gov) home page, scroll down to the bottom left corner to select “Pay a FOIA Request.” Click “See all options” and go to “Filter By Agency” to check the box for the National Labor Relations Board. Continue following instructions on the website. Please remember to include the Invoice Number, which is the NLRB FOIA Case No., and the amount you intend to pay. Further, please be advised that all FOIA payments must be paid in full before any future FOIA requests are processed.

You may contact Michael A. Maddox, the FOIA Attorney-Advisor who processed your request, at (202) 273-0013 or by email at [Michael.Maddox@nrlb.gov](mailto:Michael.Maddox@nrlb.gov), as well as the Agency’s FOIA Public Liaison, for any further assistance and/or to discuss any aspect of your request. The FOIA Public Liaison, in addition to the FOIA Attorney-Advisor, can further explain responsive and releasable agency records, suggest agency offices that may have responsive records, and/or discuss how to narrow the scope of a request in order to minimize fees and processing times. The contact information for the Agency’s FOIA Public Liaison is:

Kristine M. Minami  
FOIA Public Liaison  
National Labor Relations Board  
1015 Half Street, S.E., 4<sup>th</sup> Floor  
Washington, D.C. 20570  
Email: [FOIAPublicLiaison@nrlb.gov](mailto:FOIAPublicLiaison@nrlb.gov)  
Telephone: (202) 273-0902  
Fax: (202) 273-FOIA (3642)

After first contacting the Agency, you may additionally contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA dispute resolution services it offers. The contact information for OGIS is:

Office of Government Information Services

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National Archives and Records Administration  
8601 Adelphi Road-OGIS  
College Park, Maryland 20740-6001  
Email: [ogis@nara.gov](mailto:ogis@nara.gov)  
Telephone: (202) 741-5770  
Toll free: (877) 684-6448  
Fax: (202) 741-5769

You may obtain a review of this determination under the NLRB Rules and Regulations, 29 C.F.R. § 102.117(c)(2)(v), by filing an administrative appeal with the Division of Legal Counsel (DLC) through FOIAonline at: <https://foiaonline.gov/foiaonline/action/public/home> or by mail or email at:

Nancy E. Kessler Platt  
Chief FOIA Officer  
National Labor Relations Board  
1015 Half Street, S.E., 4<sup>th</sup> Floor  
Washington, D.C. 20570  
Email: [DLCFOIAAppeal@nrlrb.gov](mailto:DLCFOIAAppeal@nrlrb.gov)

Any appeal must be postmarked or electronically submitted within 90 calendar days of the date of this letter. Any appeal should contain a complete statement of the reasons upon which it is based.

Please be advised that contacting any Agency official (including the FOIA Attorney-Advisor, FOIA Officer, or the FOIA Public Liaison) and/or OGIS does not stop the 90-day appeal clock and is not an alternative or substitute for filing an administrative appeal.

Sincerely,

*/s/ Synta E. Keeling*

Synta E. Keeling  
FOIA Officer

Attachment: (148 pages)